IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 7597 OF 2003

Union of India,)
through its General Manager, South Central)
Railway, Secunderabad (A.P.))
(C.S.T., Mumbai))..Petitioners

versus

1. Ashok Shankar Sarkale)
2. Sow. Bharatbai w/o Ashok Sarkale)
3. Kum. Reshma Ashok Sarkale)
4. Kum. Narsabai Ashok Sarkale)
5. Vikas Ashok Sarkale)

Respondent Nos. 3 to 5 are minors, residing)
under care and guardianship of their father)
respondent No.1. All r/o Village Chapoli,)
Tal.Chakur, Dist. Latur.)..Respondents

Mr. Suresh Kumar for the petitioners.
None for respondents.

CORAM: **KSHITIJ R. VYAS, C.J.** &
DR. D.Y. CHANDRACHUD, J.

DATE: **MARCH 20, 2006**.

ORAL JUDGMENT (Per KSHITIJ R. VYAS, C.J.)

This petition under Articles 226 and 227 of the Constitution of India is filed on behalf of Union of India through the General Manager, South Central Railway, Secunderabad (A.P.) challenging the

legality and validity of the order dated 30th September, 2003, passed by the District Consumer Disputes Redressal Forum, Latur, in L.D.F. No. 32 of 2003, whereby while allowing the said complaint, the District Forum directed the petitioners to pay an amount of Rs.4,05,000/- as compensation to the respondents along with Rs. 1,000/- towards the costs of the petition within one month from the receipt of copy of the order. Out of the said amount, 1/5th of amount each is directed to be deposited in the names of minors, complainant Nos. 3 to 5, in F.D.Rs. in Nationalised Bank till each of them attains majority and remaining 2/5th amount is to be paid to complainant Nos. 1 and 2.

2. The respondents have filed an application before the District Consumer Disputes Redressal Forum at Latur claiming compensation of Rs.5,00,000/- on the allegation that on 25th April, 2002, Balaji, s/o Ashok Sarkale was travelling along with his friend Dhiraj in a train from Nanded to Udgir for attending the marriage ceremony of their relatives, after purchasing the tickets. When the train arrived on Latur Road Railway Station at about 10.10 a.m., some unknown goondas boarded the compartment in which Dhiraj and Balaji were travelling. After entering the compartment, they started abusing and assaulting both Dhiraj and Balaji for occuping their seats. Both of them resisted them.

However, they started quarrels with them and other passengers. Meanwhile, when the train left the said station and travelled some distance, somebody pushed both Dhiraj and Balaji, due to which both of them were thrown out of the train on the railway tracks and they were run over by the train and died on the spot. On 25th April, 2002 itself, the concerned Railway Master informed the incident to Chakur Police Station which registered Accidental Death No. 10 of 2002. The inquest and spot panchnamas were drawn and the autopsy was performed on the two dead bodies.

3. The respondents received the information of this incident on 26th April, 2002. They rushed to Government Hospital, Chakur, and identified the dead body. It was alleged by the respondents that the railway authorities were responsible for the said incident. According to them, both the deceased were young and healthy persons. They are thus entitled to receive compensation from the Railways.

4. Written statement at Exh. 10 was filed by the petitioners in the said proceedings. While disputing the claim of the respondents, the petitioners raised the dispute as regards jurisdiction to try and

decide the matter, as the said matter is covered under Section 13 of the Railway Claims Tribunal Act, 1987.

5. The District Forum negatived the contention as regards jurisdiction raised by the petitioners, entertained the application and passed the impugned order. Hence the present petition.

6. This Court on 7th January, 2004, while issuing notice to the respondents, directed the petitioners to deposit further amount of Rs.1,75,000/- in this Court over and above Rs.25,000/- deposited in the Consumer Forum. The respondents, though served, have neither remained present nor engaged any Advocate to represent them.

7. Mr. Suresh Kumar, learned counsel appearing for the petitioners, raised a contention by inviting our attention to Sections 13 and 15 of the Railway Claims Tribunal Act, 1987, ("the Claims Act" for short) by submitting that the Consumer Forum has no jurisdiction to decide the complaint filed by the respondents. Section 13 of the Claims Act provides jurisdiction, powers and authority of Claims Tribunal. Section 15 of the Claims Act provides bar of jurisdiction which specifically prohibits any Court or other authority to exercise any

jurisdiction, powers or authority in relation to the matters referred to in sub-sections (1) and (1A) of Section 13 of the Claims Act.

8. Section 124A of the Railways Act, 1989 (“the Act” for short) provides compensation on account of untoward incident. The words “untoward incident” are defined in Section 123 (c) of the Act which read as under:

> “untoward incident” means-
> (1) (i).... ....
>
> (ii) the making of a violent attack or the commission of robbery or dacoity; or
>
> (iii) the indulging in rioting, shoot-out or arson,
>
> by any person in or on any train carrying passengers, or in a waiting hall, cloak room or reservation or booking office or on any platform or in any other place within the precincts of a railway station; or
>
> (2) the accidental falling of any passenger from a train carrying passengers.”

In view of the definition of “untoward incident” provided under Section 123 (c) of the Act , it is beyond any doubt that the compensation on account of untoward incident can be decided by the Railway Tribunal and none else. Therefore, the District Forum under the Consumer Protection Act, 1986, could not decide the dispute

raised by the respondents. We are fortified in our view the decision of the Apex Court in the case of *Chairman, Thiruvalluvar Transport Corporation* vs. *Consumer Protection Council* (AIR 1995 S.C. 1384). It is true that the Apex Court decided the claim for compensation arising out of a motor vehicle accident. The Apex Court held that the provisions of the Motor Vehicles Act, which is a special law, would prevail over Consumer Protection Act. In paragraph 7 of the said decision, the Apex Court has referred to a decision in the case of *Union of India* vs. *M.Adair Kalam H. [(1993) CPJ 145 (N.C.),* wherein the National Consumer Disputes Redressal Comission has held that it had no jurisdiction to entertain complaints of loss, destruction, damage or non-delivery of goods by railway on account of deficiency in service since such claims would fall under the Claims Act. In view of this, the Apex Court has observed that yet it was difficult to comprehend how the National Commission had exercised jurisdiction in the said case. In view of this, in our opinion, the District Forum has no jurisdiction to decide the claim for compensation arising out of the railway accident under the Act.

9. Learned counsel appearing for the petitioners, in fact, does not dispute the liability of the Railways to pay the compensation for the

death which happened due to untoward incident. In fact, the learned counsel who appeared before the District Forum also did not dispute the liability of the Railways to pay compensation to the extent of Rs. 4 lakhs as per the Rail Accident and Untoward Incidents (Compensation) Amendment Rules, 1997 and has stated that the claimants were entitled for the same. In view of this, we are not relegating the respondents to file a fresh claim before the Railway Claims Tribunal.

10. In view of the above, we pass the following order.

(i) The respondents are entitled to claim Rs. 4 lakhs towards the compensation over and above the interest accrued on the amount of Rs. 1,75,000/- already deposited in pursuance of the order of this Court.

(ii) The petitioners are permitted to encash Rs. 1,75,000/- deposited by way of F.D.R. together with accrued interest. The petitioners are also entitled to withdraw Rs. 25,000/- deposited with the District Forum at Latur. This amount as well as the additional amount of Rs. 2 lakhs shall be paid by the petitioners to the respondents as under:

(a) Each of the five respondents shall be entitled to receive 1/5th of the aforesaid amount.

(b) The petitioners shall invest the share of respondent Nos. 3, 4 and 5 in the fixed deposit of any Nationalised Bank close to the residence of respondent Nos. 3, 4 and 5 in the name of respondent Nos. 3, 4 and 5 for such suitable periods till they attain the age of majority. The accrued interest earned on such FDR shall be paid to the natural guardian of respondent Nos. 3, 4 and 5.

(iii) The petitioners shall undertake to complete the aforesaid exercise within eight weeks from today and shall file a compliance report before the Registrar (Judicial) of this Court. The Registrar (Judicial) shall be at liberty to file a report before this Court for non-compliance of the aforesaid directions.

11. The petition is accordingly disposed of.

12. The Registry is directed to communicate this order to the respondents.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.